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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/629,262	07/31/2000	David J. Miller	10001634-1	4178

22879 7590 06/25/2003

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FORT COLLINS, CO 80527-2400

EXAMINER
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FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 06/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/629,262

Applicant(s)

MILLER, DAVID J.

Examiner

Mark A Fadok

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-12,14-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-12,14-17,19 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

The Examiner is in response to Applicant's response to Office action mailed 2/26/2003, which was received 6/9/2003. Acknowledgement is made to Applicant's submittal of amendment C received 6/12/2003, which corrected claim 14 of the amendment B submitted 6/9/2003. For the purpose of this action amendment C will only be addressed. Through the submittal of amendment C, applicant has amended claims 1,11,12,14,15,19n and 20, leaving claims 1,2,4-7,9-12,14-17,19 and 20 as pending. Applicant's amendment is sufficient to overcome the USC § 101 rejection and therefore this rejection is removed. However, the rejection on merits stands and is restated below with changes as necessitated by amendment C.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,4-7,9-12, 14-17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lazarus et al (6,430,539) in view of Applicant's disclosure and Official Notice.

In regards to claims 1,2,4-7, 9 and 10, Lazarus discloses:

generating a symbol; and arranging the symbols spatially, based on the numeric values, receiving a set of numeric values, each associated with parameters,

generating the numeric values based on an Internet communication activity of the customer.

converting initial data based on the communication activity to a limited data set of the numeric values.

receiving additional data based on further communication activity, and modifying the numeric values based on the additional data.

each symbol includes a characteristic indicating a numeric value of a selected parameter.

arranging the symbols includes generating a representation of a three-dimensional array.

selecting a subgroup of customers based on a spatial region in which their corresponding symbols reside.

(see at least the summary and Fig 1a and 1b),

Lazarus teaches decaying numeric values associated with the recency indicator over time according to a absence of activity by each customer and increasing the numeric value associated with the recency indicator over time according to recent activity by each customer. (col 3, lines 55-67)

Lazarus teaches a galaxy layout according to a polar coordinate system. Lazarus uses clustering techniques to place the information into a vector (col 3, lines 10-54).

Lazarus depicts vectors in a 3-dimensional "galaxy" representation instead of clusters

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for clearer representation of the data to distinguish trends and patterns in customer behavior (fig 1). It would have been obvious to a person of ordinary skill in the art to remove the clustering techniques to present the data in clusters, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same function as before involves only routine skill in the art, In re Karlson, 136 USPQ 184.

Lazarus does not specifically mention including a recency indicator, and an advocacy indicator for each customer. The applicant has stated that the use of recency, monetary and advocacy characteristics in marketing analysis is old and well known in the art (specification, page 2 lines 1-5). It would be obvious to a person of ordinary skill in the art to include in Lazarus the use of recency, monetary and advocacy characteristics in as taught by the disclosure, because these indicators are readily available from most profiles and are useful in predicting behavior.

Lazarus also does not specifically mention characteristics selected from a group comprising motion, color, size, shape, length, direction, and intensity. It is old and well known in the art that information may be displayed in numerous different manners including ones that signifying characteristics such as motion, color, size, shape, length, direction, intensity. It would have be obvious to a person of ordinary skill in the art to graphically display the predictive modeling of Lazarus using motion, color, size, shape, length, direction, intensity, because this would improve the visualization of the data in a manner that a human operator could more easily understand and allow for better distribution of incentives.

In regards to claims 11, 12, 14-17, 19 and 20, see response to claims 1, 2, 4-7, 9 and 10 above.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 2, 4-7, 9-12, 14-17, 19 and 20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Friday 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***


***Washington D.C. 20231***


or faxed to:

**(703) 305-7687** [Official communications; including  
After Final communications labeled  
"Box AF"]

**(703) 746-7206** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

  
Mark Fadok  
Patent Examiner

  
Jeffrey A. Smith  
Primary Examiner